IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 755 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HUSENBHAI JINABHAI

Versus

BABI DR/O MAGAN BADHAR VASAVA

Appearance:

1. Civil Revision Application No. 755 of 1986

MR NK MAJMUDAR for Petitioner No. 1

MR PM RAVAL for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/2002

ORAL JUDGEMENT

This Revision Application has been preferred against the judgment and order dated 31st January, 1986 passed by the learned Extra-Assistant Judge, Bharuch in

Regular Civil Appeal No. 124 of 1984 under section 29 (2) of the Bombay Rent, Hotel & Lodging Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"]. The petitioner before this Court is the Appellant-Defendant.

The respondent herein [hereinafter referred to as, "the Plaintiff"] is the owner of the suit premises being House No. 43, Ward No. 7, situated at Rajpipla. The suit premises was given on rent to the petitioner herein [hereinafter referred to as, "the Defendant"]. Under Notice dated 12th November, 1982, the plaintiff demanded arrears of rent to the tune of Rs. 308/= and terminated the tenancy. The notice was duly served upon the defendant. The plaintiff instituted Regular Civil Suit No. 1 of 1983 in the Court of Civil judge [JD], Rajpipla and prayed, inter alia, for recovery of possession of the suit premises and the arrears of rent. It was the claim of the plaintiff that in earlier proceedings being Regular Civil Suit No. 174 of 1974, the standard rent of the suit premises was fixed at Rs. 8/= per month; that since 1st August, 1979, the defendant had paid a sum of Rs. 100/= towards the rent. The defendant was thus in arrears of rent to the tune of Rs. 308/= i.e., for a period of more than six months. The defendant neglected to pay the said amount of arrears of rent until the expiration of the period of one month from the date of receipt of notice given under sub-section (2) of Section 12 of the Rent Act. The plaintiff also required the suit premises for her bona fide personal use.

The suit was contested by the defendant by filing written statement Exh. 10. He agreed that the standard rent of the suit premises was fixed at Rs. 8/= per month in Regular Civil Suit NO. 174/1974. He, however, denied that he was in arrears of rent as claimed. According to the defendant, the plaintiff used to collect the rent periodically every three to four months but did not issue receipts for the same. He denied that the plaintiff required the suit premises for her personal use. It was also urged that the defendant shall suffer greater hardship if the decree for eviction were passed.

The learned trial Judge was, under his judgment and order dated 25th June, 1984, pleased to hold that the defendant was in arrears of rent for six months and more and that he had neglected to pay the amount of arrears of rent within one month from the date of receipt of the suit notice. It was also held that the defendant was not ready and willing to pay the rent. The plaintiff

required the suit premises for her personal use and that a greater hardship would be caused to the plaintiff, if the decree for possession were refused. The Court passed decree for possession of the suit premises and for the amount of arrears of rent. The Court directed the plaintiff to apply for recovery of mesne profits under Order XX Rule 12 CPC.

Feeling aggrieved, the defendant preferred the Regular Civil Appeal No. 124 of 1984 in the District Court, Bharuch. The learned Assistant Judge, Bharuch, under the impugned judgment and order dated 31st January, 1986, was pleased to dismiss the appeal. Feeling aggrieved, the defendant has preferred the present Revision Application.

The Court below, under the impugned judgment and order, reversed the finding of the trial Court with respect to the requirement of the suit premises by the plaintiff for personal use, however, upheld the findings as regards the arrears of rent.

It is admitted that the standard rent of the suit premises was fixed at Rs. 8/= per month. It, therefore, cannot be disputed that the rent of the suit premises was payable by month and that there was no dispute as to the standard rent of the suit premises. It is also proved that since 1st August, 1979 till the date of the suit notice i.e., 12th November, 1982, the defendant had paid a sum of Rs. 100/= towards the rent of the suit premises. Even if the bare say of the defendant were accepted, the defendant had paid not more than Rs. 150/= towards the rent of the suit premises for the said period. Evidently, on the date of the suit notice, the defendant was in arrears of rent for six months and more. It is also established that the defendant neglected to pay the amount of arrears of rent within one month from the date of the receipt of the suit notice. Hence, in my view, the case falls within the purview of section 12 (3) (a) of the Rent Act and both the Courts below have rightly passed decree for possession of the suit premises and the arrears of rent. The claim for protection under section 12 (3)(b) of the Rent Act can not be contenanced and hence, requires to be rejected.

In the result, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

[Ms. R.M Doshit, J.]

Prakash*